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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,257	09/26/2003	James Stewart McCormick	3455-Z	4907

EXAMINER	
AVELLINO, JOSEPH E	

ART UNIT	PAPER NUMBER
2143	

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Law Office of Jim Zegeer
Suite 108
801 North Pitt Street
Alexandria, VA 22314

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/670,257

Applicant(s)

MCCORMICK ET AL.

Examiner

Joseph E. Avellino

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-44 are presented for examination. Claims 1, 17, 33, 34, 39, and 44 independent.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-4, 17-20, 33, 34, 39 and 44 are rejected under 35 U.S.C. 101 because they fail to produce a "concrete, tangible, and useful result" as required by *State Street*, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02.
4. Referring to exemplary claim 1, the claim results in the mere identification of resources which is above the utilization threshold, which fails to generate a tangible and useful result. In order for a claim to produce a useful result, the identification must be used in some fashion. An example would be claim 5, which requires that the identified resources are used in generating a report and presenting the report to an operator. Correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 9, 10-12, 17-22, 25-28, 33-37, 39-42, and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Black et al. (USPN 7,143,153) (hereinafter Black).

6. Referring to claim 1, Black discloses a method of monitoring resource utilization within a connection oriented switch (i.e. ATM network switch) (e.g. abstract; col. 28, lines 40-55), comprising the steps of:

providing at least one utilization threshold (i.e. dynamic threshold table) (Figures 7o-7t, 68; col. 167, lines 27-48);

for each of the plurality of resources, each corresponding to one of othe at least one utilization threshold, determining whether a utilization of the resource is above the corresponding utilization threshold (i.e. identify the expression against which the selected resource will be checked, such as attribute >10) (col. 169, lines 1-29); and

identifying each resource for which the utilization is above the corresponding utilization threshold (i.e. receive notice of a threshold event) (col. 169, lines 40-58).

7. Referring to claim 2, Black discloses the resource includes bandwidth (i.e. Rx and Tx traffic) (Figure 68, resource ID no. 7312).

8. Referring to claim 3, Black discloses providing a list of resources, and wherein the step of determining whether a utilization of a resource is above the corresponding

utilization threshold is carried out only with respect to resources within the list of resources (this is an inherent feature, since the switch would not check resources which the administrator does not care about, since they are not in the threshold table, they would not be checked) (Figure 68).

9. Referring to claim 4, Black discloses the threshold is provided from an operator (col. 167, line 65 to col. 168, line 14).

10. Referring to claim 5, Black discloses generating a report (the Office construes "report" as any notice which will identify a resource with any information, such as an SNMP trap) including any identified resources and presenting the report to an operator (i.e. report threshold events to SNMP manager, which sends an SNMP trap, which notifies the NMS client, which displays a notice to the user through GUI 895) (col. 169, lines 40-50).

11. Claims 6, 9 and 10 are rejected for similar reasons as stated above.

Furthermore Black discloses generating an alarm (i.e. SNMP trap) (col. 169, lines 40-50).

12. Referring to claim 11, Black discloses determining whether a utilization of a resource is above the corresponding utilization threshold and the step of identifying

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each such resource are carried out repeatedly (i.e. sampling frequencies) (col. 169, lines 27-40).

13. Referring to claim 12, Black discloses pausing after the step of identifying each resource (i.e. the sampling frequency is a periodic check, and therefore it will pause until the next time the resource must be checked) (col. 169, lines 27-40).

14. Claims 17-22, 25-28, 33-37, 39-42, and 44 are rejected for similar reasons as stated above. Furthermore Black discloses that the system can identify resources that are below the corresponding utilization threshold (i.e. if attribute<5) (col. 169, lines 1-10).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 8, 13-16, 23, 24, 29-32, 38, 43, are rejected under 35 U.S.C. 103(a) as being unpatentable over Black.

17. Referring to claim 7, Black discloses the invention substantively as described in claim 5. Black does not explicitly state that the report includes the utilization of any identified resources in the report, rather a notice is sent to the user, however this information would be easily sent via an SNMP trap. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for the utilization of any identified resource in the report is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Black to include the resource utilization level in the report in order to provide valuable information to the administrator for effectively managing the network.

18. Claim 8 is rejected for similar reasons as stated above.

19. Referring to claim 13, Black discloses the invention substantively as described in claim 9. Black does not explicitly state that the switch monitors the receipt of call connection establishment signals and does the determination only upon receipt of a call

connection establishment signal, however this is a well known event triggered determination. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for checking the utilization threshold only upon receipt of an establishment signal is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Black to include in the sampling frequency list a choice of 'on receipt of an establishment signal' in order to eliminate needless checking of values which would not change if there is no call connection signals, thereby reducing overhead processing of the device.

20. Referring to claim 14, Black discloses the invention substantively as described in claim 13. Black does not explicitly state that an alarm is generated only when an alarm has not been generated since the utilization of the resource last rose above the threshold, however this is a well known technique in order to reduce redundant alarms. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for generating an alarm only when an alarm has not been generated is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Black to include alarm suspensions in order to reduce the likelihood of flooding a particular management computer with redundant alarms, thereby reducing overhead processing of the management server as well as reducing bandwidth congestion in the network.

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21. Claims 15, 16, 23, 24, 29-32, 38, 43, are rejected for similar reasons as stated above.

Conclusion

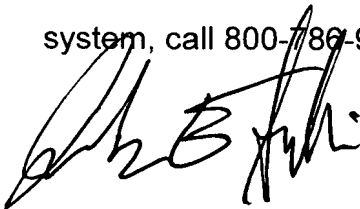
22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. E. Avellino', is written over the text of the signature block.

Joseph E. Avellino, Examiner
May 18, 2007